

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

ROMEO S. PERALTA, JR.,)	Civ. No. 11-00729 JMS-BMK
)	
Plaintiff,)	FINDINGS AND
)	RECOMMENDATION THAT
vs.)	DEFENDANTS' MOTION TO
)	DISMISS FOR FAILURE TO
SPERIAN EYE & FACE)	COMPLY WITH COURT'S
PROTECTION, INC., ET AL.,)	8/3/2012 ORDER BE GRANTED
)	
Defendants.)	
)	

FINDINGS AND RECOMMENDATION THAT
DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO
COMPLY WITH COURT'S 8/3/2012 ORDER BE GRANTED

Before the Court is Defendants Sperian Eye & Face Protection, Inc. and Zee Medical, Inc.'s Motion to Dismiss for Failure to Comply With Court's 8/3/2012 Order (Doc. 47). The Court heard this Motion on November 7, 2012. After careful consideration of the Motion, the supporting memorandum, and oral argument, the Court finds and recommends that Defendants' Motion be GRANTED.

As Defendants' Motion describes, Plaintiff Romeo S. Peralta, Jr. has failed to attend Court hearings, respond to discovery requests, comply with the Court's August 3, 2012 Court order, and otherwise prosecute this case. Although

Plaintiff was initially represented by counsel, his counsel withdrew on March 30, 2012. Since that date, Plaintiff has been proceeding pro se.

On April 24, 2012, Defendants served Plaintiff via certified mail, return receipt requested, three discovery requests: (1) Interrogatories Propounded to Plaintiff, (2) First Request for the Production of Documents to Plaintiff, and (3) First Request for Admissions to Plaintiff. (Fujii Decl'n ¶ 3.) After learning that Plaintiff's mailing address had changed, Defendants confirmed with the U.S. Postal Service that the discovery requests had been forwarded to Plaintiff's new address. (Id. ¶ 6.) The return receipts indicated that Plaintiff received the discovery requests on May 22, 2012. (Id. ¶ 7; Ex. D.)

After Plaintiff failed to respond to the discovery requests, Defendants filed a Motion for Pretrial Conference and/or Status Conference on June 4, 2012. (Doc. 40.) The Court issued a Notice of Hearing, but Plaintiff did not appear on July 6, 2012 at the scheduled hearing for this motion. (Doc. 42.) The Court therefore continued the hearing on this motion and issued an Order to Show Cause. (Id.; Doc. 43.) The further hearing and the Order to Show Cause were scheduled to be heard on August 3, 2012. (Doc. 42.)

On August 3, 2012, Plaintiff appeared telephonically. (Doc. 44.) The Court took no action with respect to the Order to Show Cause. (Id.) However, the

Court ordered Defendants to resend the three discovery requests to Plaintiff and ordered Plaintiff “to answer and respond to those requests no later than 9/4/2012.” (Id.) The Court also scheduled a Discovery Conference on September 24, 2012 to follow-up on the discovery requests. (Id.)

Defendants complied with the Court’s order by resending the discovery requests to Plaintiff on August 3, 2012. (Fujii Decl’n ¶ 14.) Defendants also sent Plaintiff several Authorizations for him to sign and return. (Id.) Plaintiff did not respond to the discovery requests nor did he return the Authorizations or appear at the September 24, 2012 Discovery Conference. (Id. ¶ 17-18; Doc. 46.)

In light of Plaintiff’s failure to comply with the Court’s August 3, 2012 order, and his repeated failure to respond to discovery requests and to participate in Court hearings, the Court finds and recommends that Defendants’ Motion to Dismiss for Failure to Comply With Court’s 8/3/2012 Order be GRANTED. Consequently, the Court finds and recommends that this action be dismissed with prejudice.

Any objections to this Findings and Recommendation shall be filed in accordance with the Federal Rules of Civil Procedure and this Court’s Local Rules.

DATED: Honolulu, Hawaii, November 19, 2012.

IT IS SO ORDERED.



/S/ Barry M. Kurren
Barry M. Kurren
United States Magistrate Judge

Peralta v. Sperian Eye & Face Protection, Inc., et al., Civ. No. 11-00729 JMS-BMK; FINDINGS AND RECOMMENDATION THAT DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO COMPLY WITH COURT'S 8/3/2012 ORDER BE GRANTED.